

Application No.: 09/919,110
Amendment dated: March 14, 2006
Reply to Office Action of September 14, 2005
Attorney Docket No.: 55603-049 (CSSK-026)

Remarks

Claims 48-71 are pending in the present application. Claims 48, 59 and 70 are independent claims directed to a method, system and computer program product for *rating* brokers or agents. Claims 54, 65 and 71 are independent claims directed to a method, system and computer program product for *ranking* brokers or agents. Each of these independent claims, along with dependent claims 49, 52, 53, 57, 58, 60, 63, 64, 68 and 69, has been amended for clarification. Claims 72 and 73 have been added as dependent claims to claims 70 and 71, respectively. No new matter has been added.

Rejections Under 35 USC §102(e)

Claims 48, 50, 52-53, 59, 61, 63-64 and 70 have each been rejected under 35 USC §102(e) as being anticipated by US Patent No. 6,049,781 to Forrest et al. ("Forrest"). Given that claims 48, 59 and 70 are corresponding independent claims, analysis will be provided with respect to claim 48, and the same analysis would apply equally to claims 59 and 70.

In the present application claim 48 has been amended, and now reads as follows:

48. A method of evaluating brokers or agents using a set of real estate databases, the real estate databases comprising information and data relating to real estate listings and sales, the method comprising the steps of:
- A. defining a set of search criteria;
 - B. accessing the set of real estate databases and obtaining therefrom as a function of the search criteria, a set of listing information for a set of properties, the listing information including for each property in the set of properties a listing broker or agent, a list date, a list price, and, if sold, a sale date and a sale price;
 - C. performing for each property a retrospective market analysis that provides a retrospective market value of the property on the list date; and

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- D. rating one or more of the listing brokers or agents based on at least one of sale price or list price relative to the retrospective market value.

For a claim to be invalid under §102, the reference must teach the identical invention. Specifically, the Federal Circuit has held that:

The identical invention must be shown in as complete detail as is contained in the ... claim.

Richardson v. Suzuki Motor Co., 868 F.2d 1226,
1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989)

Furthermore, to be invalid under §102 every element of the claim must be anticipated by a prior art reference. The Federal Circuit has also specifically held that:

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.

Verdegaal Bros. v. Union Oil Co. of California, 814
F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)

Attention is specifically directed to elements C and D of amended claim 48, which read:

- C. performing for each property a retrospective market analysis that provides a retrospective market value of the property on the list date; and
D. rating one or more of the listing brokers or agents based on at least one of sale price or list price relative to the retrospective market value.

Forrest does not teach the above elements, particularly with respect to performing a *retrospective market analysis* that gives a *retrospective market value* at the time the market was listed. Forrest discusses, at a superficial level, broker rating that appears to be based on a comparison of an *actual sale price* versus the broker's *estimated sales price* for a given property (see col. 19, lines 47-51). The broker's *estimate sales price* is not, however, a *retrospective market value* that results from a *retrospective market analysis* – as required in the above claim 48.

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It appears that the broker's *estimated sales price* in Forrest is the broker's original list price. The broker's original list price was, at the time determined, the result of the broker's judgment. The broker may have used a market analysis as an input at that time she determined her proposed list price – whether or not she did and the degree to which it influenced the broker in determining a list price will vary broker to broker, and may also vary property to property for the same broker. In fact, it is not unusual for two different brokers to give a home owner different proposed listing prices for the same property. There may be a variety of reasons for such differences, e.g., some brokers may simply be more aggressive on price than others. In any event, such instances clearly demonstrate that a broker's *estimated sales price* may be determined based on a variety of factors – not just a market value determined through a market analysis.

Given the above, it is clear that Forrest does not teach elements C and D of the present invention. For example, in Forrest, if the broker always had an *estimated sales price* (or list price) that was 10% under the market value, then that broker would almost always sell the property quickly and above list price. This would give the broker a high rating according to Forrest, regardless of whether the broker sold the property at or above the market value – because Forrest only discusses comparing sales price to list price.

Contrast to the present invention, where the broker could have a low rating under identical circumstances. This is because the brokers are rated based on a comparison of the sales price to a *market analysis value*, not the broker's original list price. Thus the present invention will produce different results than Forrest. In fact, the present invention gives a more objective rating, because the market value will be more objective than the broker's subjective estimated sales price.

Here is an example where Forrest and the present invention (i.e., "Weiss") produce different results for the same transaction:

Forrest:		Present Invention:
1) Market Value:	\$250,000	\$250,000
2) Broker's List Price:	\$245,000	\$245,000

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3) Sales Price:	\$247,500	\$247,500
4) Forrest Percentage:		Weiss Percentage
	<u>247,500/245,000 => +1.01%</u>	<u>247,500/250,000 => -0.99%</u>

Under the same circumstances Forrest produces a positive result while the present invention produces a negative result.

The distinction is made greater by that fact the present invention uses a *retrospective* market analysis. In other words, in the present invention, the market analysis can reach back in time to determine the market value. Forrest does not address market values (or valuations), and particularly not retrospectively.

Furthermore, since Forrest does not evaluate brokers in the same manner as taught by the present application, Forrest cannot and does not rate them in the manner required by element D. That is, Forrest does not rate brokers based on an evaluation of sales price to market value or valuation.

Accordingly, claim 48 is not anticipated by Forrest, since Forrest does not identically teach each and every element thereof – particularly with regard to elements C and D of claim 48. Accordingly, Applicant respectfully requests removal of the rejections under 35 USC §102 to independent claim 48 and its dependent claims 50 and 52-53.

Independent claim 59 is a system claim that corresponds to claim 48 and independent claim 70 is a computer program product claim that also corresponds to claim 48. For the same reasons put forth for claim 48, claim 59 and its dependent claims 61 and 63-64 and claim 70 removal of these rejections is requested.

Rejections Under 35 USC §103(a)

Claims 49, 51, 54-58, 60, 62, 65-69 and 71 have been rejected under 35 USC §103 as being obvious over Forrest et al. and an article entitled HomeRoute Launches Agent Track; Only Web Site to Rank Real Estate Agents ("HomeRoute"). The gist of the

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rejections that is that Forrest does not teach *ranking* brokers, but HomeRoute does. HomeRoute, however, is void of any details of how it ranks brokers, other than a very high level list of rating parameters that consists of:

- utilize technology to maximize effectiveness and service for the consumer
- produce above average production and bi in business fulltime
- demonstrate ethical behavior in business dealings
- communicate well and demonstrate diligent follow up
- support HomeRoute's philosophy of providing consumers with value and savings by using the Internet

See HomeRoute items 5-10

Independent claim 54 will be discussed first, and has been amended to read follows:

54. (Currently Amended) A method of evaluating brokers or agents using a set of real estate databases, the real estate databases comprising information and data relating to real estate listings and sales, the method comprising the steps of:

- A. defining a set of search criteria;
- B. accessing the set of real estate databases and obtaining therefrom as a function of the search criteria, a set of listing information for a set of properties, the listing information including for each property in the set of properties a listing broker or agent, a list date, a list price, and, if sold, a sale date and a sale price;
- C. performing for each property a retrospective market analysis that provides a retrospective market value of the property on the list date; and
- D. ranking a plurality of the listing brokers or agents based on at least one of sale price or list price relative to the retrospective market value.

Once again, attention is drawn to elements C and D. As discussed above, Forrest does not teach element C – since it does not teach using *retrospective* market values to evaluate brokers. HomeRoute does not teach this either. HomeRoute mentions ranking, but does not mention ranking brokers using *retrospective market analysis*. HomeRoutes'

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discussion for ranking brokers, recounted above, makes no mention of performing a retrospective market analysis or ranking brokers based on a comparison of sales prices to retrospective market values. HomeRoutes' parameters for ranking are not even similar.

Forrest does not teach ranking at all; adding HomeRoute does not make claim 54 obvious. Clearly, the combination of Forrest and HomeRoute does not teach broker/agent ranking using retrospective marketing values. Applicant respectfully requests removal of the rejections to claim 54 and its dependent claims 55-58.

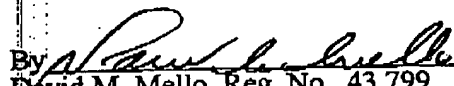
Independent claim 65 is a system claim that corresponds to claim 54 and independent claim 71 is a computer program product claim that also corresponds to claim 54. For the same reasons put forth for claim 54, claim 65 and its dependent claims 66-69 and claim 71 are all believed to be in condition for allowance.

Additionally, claims 49 and 51, which depend from claim 48, claims 60 and 62, which depend from claim 59, are also allowable for the same reasons as put forth with respect to claim 54, and with respect to their particular independent claims.

In closing, Applicant believes that the present application is in condition for allowance. A Notice of Allowance is respectfully solicited. Should any questions arise, the Examiner is encouraged to contact the undersigned. The Commissioner is hereby authorized to charge any additional fees under 37 C.F.R. §1.16 and §1.17 that may be required, or credit any overpayment, to our Deposit Account No. 50-1133.

Respectfully submitted,

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